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**In the Supreme Court of the United States**

**OCTOBER TERM, 1942**

**THE UNITED STATES OF AMERICA, APPELLANT.**

**PHILIP LEONOWICZ AND MARVIN SPECTOR**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE EASTERN DISTRICT OF MISSOURI**

**STATEMENT AS TO JURISDICTION**

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**In the United States District Court,  
Eastern District of Missouri, Eastern  
Division**

**No. 23034**

**UNITED STATES OF AMERICA, PLAINTIFF**

**v.**

**PHILIP LEPOWITCH, ALIAS PHIL STEWART, AND  
MARVIN SPECTOR, ALIAS LOUIS BAKER, DEFEND-  
ANTS**

**STATEMENT AS TO JURISDICTION**

**(Filed November 25, 1942)**

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause on October 26, 1942. Petition for appeal was filed on November 25, 1942, and is presented to the District Court herewith, to wit, on the 25th day of November 1942.

**JURISDICTION**

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in

this cause is conferred by the Act of March 2, 1907, 34 Stat. 1246 (as amended by the Act of May 9, 1942, 56 Stat. 401), 18 U. S. C. 682, commonly known as the Criminal Appeals Act, and by 28 U. S. C. 345.

#### STATUTE INVOLVED

Section 32 of the Criminal Code, as amended (18 U. S. C. 76) provides:

Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any department, or any officer of the Government thereof, or under the authority of any corporation owned or controlled by the United States, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any department, or any officer of the Government thereof, or any corporation owned or controlled by the United States, any money, paper, document, or other valuable thing, shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

#### THE ISSUES AND THE RULING BELOW

A two-count indictment was returned at the March 1942 term of the Grand Jury. Defendants filed a joint demurrer which, as the District Court indicated in its opinion, presents only the ques-

tion "whether the indictment pleads facts sufficient to constitute an offense within the terms of the statute."

Count One is drawn to charge an offense within the first interdiction of the statute. Thus it alleges that defendants, with the intent to defraud one Mrs. Adele Silk, falsely pretended to be Agents of the Federal Bureau of Investigation and did falsely take upon themselves to act as such "by then and there in said pretended capacity, demanding of and from the said Mrs. Adele Silk that she give the defendants information of and concerning the whereabouts of one Abe Zaidman \* \* \*." In sustaining the demurrer to this count the District Court held that "the action of the defendants, in their false and pretended character of Federal Bureau of Investigation Agents, in demanding that Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be found, is not \* \* \* taking upon themselves to act as Federal Bureau of Investigation Agents \* \* \*."

Count Two is drawn to charge an offense within the second interdiction of the statute. Thus it alleges that defendants, with intent to defraud Mrs. Silk, falsely pretended to be Federal Bureau of Investigation Agents and in such pretended character "did demand from the said Mrs. Silk a valuable thing, to-wit, demand that she, the said Mrs. Adele Silk, then and there give to them,

the said defendants, valuable information of and concerning the whereabouts of one Abe Zaidman; \* \* \*." As to this count, the District Court held that the information demanded by the defendants was not "a valuable thing" within the meaning of the statute."

Inasmuch as the District Court related that the facts alleged did not fall within the condemnation of the statute, the Court construed the statute, and the ruling is subject to review by the Supreme Court. *United States v. Birdsall*, 233 U. S. 223, 230; *United States v. Patten*, 226 U. S. 525, 535; *United States v. Heinze*, 218 U. S. 532, 540; *United States v. Stevenson*, 215 U. S. 190, 194-195; *United States v. Kapp*, 302 U. S. 214, 217.

#### THE QUESTIONS ARE SUBSTANTIAL.

The questions involved are substantial and of public importance, for the narrow construction of Section 32 embodied in the District Court's ruling would permit wholesale impersonations of Federal officers, thus rendering the statute ineffective "to maintain the general good repute and dignity of the service itself," which is its principal object. *United States v. Barnow*, 239 U. S. 74, 80.

1. Under the first interdiction of the statute, all that is required, in addition to the fraudulent intent and false impersonation, is "some act in keeping with the pretense." *United States v. Barnow*, supra, page 77. Since ascertaining the whereabouts of suspected criminals and witnesses



in connection with official investigation is obviously a normal function of F. B. I. Agents,<sup>1</sup> the sustaining of the demurrer was as to this count on the ground that in demanding information as to Zaidman's whereabouts, defendants were not acting as F. B. I. Agents would act, is, we believe, plainly erroneous.

2. As to Count Two, which alleges the requisite fraudulent intent, false impersonation and demand for something of value, the ruling that the information demanded—as to the whereabouts of Zaidman—was not a “valuable thing” within the meaning of the statute unwarrantedly limits the scope of the statute.

(a) “The term ‘or other valuable thing’ (as used in Section 32) is a comprehensive one. By common consent, it means and implies a thing of value or worth to the party who obtains it.” *United States v. Ballard*, 118 Fed. 757, 759 (Western District Missouri) and that the information demanded was valuable to defendants is indicated, we believe, on the face of the indictment, by the false pretense resorted to in order to obtain it. Indeed, “such a pretense would rarely be made for benevolent purposes.” *United States v. Barnow*, supra, page 78.

<sup>1</sup> According to the Attorney General's report for the fiscal year ended June 30, 1941 (pp. 198-199), Agents of the F. B. I. located and apprehended 2,633 fugitives during that fiscal year.

The value of the information to the defendants would also, of course, be a matter for proof at the trial. Even oral information can be far more valuable than money, or other tangible property, and if the obtaining of it is not included within the proscription of the statute, then there is no limit to which imposters may go in securing confidential and other valuable information not otherwise available to them, as, for instance, by impersonating census takers, military officers, or inspectors for various government regulatory agencies, in addition to F. B. I. Agents.

(b) An even more compelling reason for sustaining the applicability of the statute to the facts alleged in Count Two is that the purpose of the law is "not merely to protect innocent persons from actual loss through reliance upon false assumptions of Federal authority but to maintain the general good repute and dignity of the service itself." *United States v. Barnow*, supra, page 80. It is important "not only that the authority of the governmental officers and employees be respected in particular cases, but that a spirit of re-

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<sup>1</sup> "There was an increase of 34.2 percent in the number of defendants in impersonation cases filed during the fiscal year" ending June 30, 1941. "The increase in the violations of this character is apparently due to the fact that many persons for one reason or another are impersonating members of the armed forces of the United States." Annual report of the Attorney General of the United States, fiscal year ended June 30, 1941, page 105.

spect and good will for the government and its officers shall generally prevail." *Idem* page 78,<sup>3</sup> and, further "the gist of the offense is not the demanding or obtaining of the money or other thing of value of another, if it were, there might be doubt whether the act, although done with criminal intent, could be made an offense against the United States, for the reason that it has no relation to the execution of any powers of Congress or to any matter within the jurisdiction of the United States; but the gist of the offense is the false impersonation of an officer of the United States." *Littell v. United States*, 169 Fed. 620, 622-623 (C. C. A. 9). See also *Lamar v. United States*, 241 U. S., 103, 114-116; *Brafford v. United States*, 259 Fed. 511, 513 (C. C. A. 6); *United States v. McNaugh*, 42 F. (2d) 835, 837 (C. C. A. 2); *Russell v. United States*, 271 Fed. 684, 685 (C. C. A. 9).

Since this case presents questions of substance in connection with the enforcement of the im-

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<sup>3</sup> "The confidence and support of citizens in every section of the country have contributed materially to the successful operation of the F. B. I. during the year." (Annual report of the Attorney General of the United States, fiscal year ended June 30, 1941, page 180.) But the good repute of the F. B. I. would, we believe, soon be dissipated, and the public would be loathe to cooperate with its agents if, for instance, it became known that the law permitted employees of collection agencies to pose as F. B. I. Agents in order to obtain information they could not otherwise secure.



personation statute affecting not only the Federal Bureau of Investigation but all Federal agencies, a review of the ruling of the District Court by the Supreme Court is warranted.

A copy of the opinion sustaining the demurrer is attached hereto.

Respectfully submitted,

CHARLES FAHY,  
*Solicitor General.*

[Copy]

**In the United States District Court,  
Eastern District of Missouri, Eastern  
Division**

**No. 23034**

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**UNITED STATES OF AMERICA, PLAINTIFF**

**v.**

**PHILIP LEPOWITCH, ALIAS PHIL STEWART, AND  
MARVIN SPECTOR, ALIAS LOUIS BAKER, DEFENDANTS**

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**OPINION**

(Filed October 26, 1942)

This matter comes on for determination under a joint demurrer to the indictment filed on behalf of the defendants. The grand jury has returned an indictment in which the defendants are charged with violating Section 76, Title 18, United States Code, wherein it is alleged that the defendants falsely assumed and pretended to be agents of the Federal Bureau of Investigation. The indictment is so drawn as to be intended to reach both features of the statute—namely, count one is drawn under the phraseology of the statute covering the activities of one who falsely, in the pretended capacity, takes upon himself to act as such, while

count two of the indictment covers the other feature of the statute wherein one in such false and assumed character demands from another a valuable thing.

In the first count the indictment alleges that the defendants did falsely take upon themselves to act in the capacity of agents of the Federal Bureau of Investigation by "demanding of and from the said Mrs. Adele Silk that she give the defendants information of and concerning the whereabouts of one Abe Zaidman." The second count alleges that defendants in their pretended character "did demand from the said Mrs. Adele Silk a valuable thing, to-wit, demand that she, the said Mrs. Adele Silk, then and there give to them, the said defendants, valuable information of and concerning the whereabouts of one Abe Zaidman."

The demurrer is based upon one ground only—namely, that the indictment fails to state facts sufficient to charge defendants with a commission of a criminal offense against the United States of America.

The validity of Section 76, Title 18, United States Code, is not raised by the demurrer, and accordingly there is no constitutional question involved. We are concerned here only with the one feature, that of determining whether the indictment pleads facts sufficient to constitute an offense within the terms of the statute. The language of the statute is fairly clear to the extent that intent

to defraud either the United States, or any person is a necessary element of the offense, coupled with falsely assuming or pretending to be an officer or employee acting under the authority of the United States or some department thereof, or a corporation owned or controlled by the United States. Present these two conditions the statute may be violated in either of two ways condemned as illegal. First, by one taking upon himself to act in the falsely pretended character, or secondly by demanding or obtaining from any person or from the United States "any money, papers, document, or other valuable thing." Hence, the demurrer here raises the issue as to whether the defendants in falsely pretending to be agents of the Federal Bureau of Investigation and demanding of Mrs. Silk that she give the defendants information concerning the whereabouts of one Abe Zaidman constitutes, on the one hand, taking upon themselves to act as Federal Bureau of Investigation agents, or, on the other hand, constitutes demanding of Mrs. Silk "a valuable thing" within the meaning of the statute.

It is my view that the action of these defendants, while highly reprehensible, does not come within the terms of the statute. The action of the defendants, in their false and pretended character of Federal Bureau of Investigation agents, in demanding that Mrs. Silk inform the defendants as to where Abe Zaidman was located or could be

found, is not in my opinion taking upon themselves to act as Federal Bureau of Investigation agents, nor was the information demanded by them "a valuable thing" within the meaning of the statute. It follows that the demurrer to the indictment should be sustained.

It is so ordered.

(S) GEO. H. MOORE,  
*United States District Judge.*

Dated at St. Louis, Missouri, this 26th day of  
October, A. D. 1942.